IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3591 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

MAHENDRASINH J. DARBAR.

Appearance:

1. First Appeal No. 3591 of 1995

MR JC SHETH for Petitioner No. 1

MR HEMANT S SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 06/08/2003

ORAL JUDGEMENT

1. Union of India, through the General Manger, Western Railway, by filing this appeal under Section 96 of the Code of Civil Procedure, has challenged the judgment and decree dated September 28, 1994 passed by the learned Judge, Court No.17, City Civil Court, Ahmedabad, in Civil Suit No.5092 of 1988, partly decreeing the suit filed by the respondent and awarding a sum of Rs.95,500/- with interest at the rate of 12% per annum from the date of the suit till realisation with proportionate costs of the suit.

2. The respondent-plaintiff had filed Civil Suit No.5092 of 1988 in the City Civil Court, Ahmedabad, claiming compensation of Rs.2,75,500/- for the injuries sustained and the permanent disablement suffered by him due to an accident which took place on August 16, 1986. The respondent was travelling by Saurashtra mail from Surat to Ahmedabad. When the train had stopped at Anand Railway Station, the respondent had felt thirsty and, therefore, he was standing near the door of the bogie in which he was travelling. While he was drinking water, the train, all of a sudden, had started with the result the respondent had fallen between the platform and the train, and had sustained serious injuries. It is the case of the respondent that, before putting the train in motion, no whistle was blown. Since the respondent had sustained serious injuries, he was removed to the Civil Hospital, Anand. As the respondent had sustained serious injuries on the head, he was shifted to the S.S.G. Hospital, Vadodara. Nearly nine operations were performed on the respondent at the S.S.G. Hospital, Vadodara. The respondent had suffered permanent disability as he was not able to pass urine naturally due to fracture of pelvis with rupture in urethra and bladder. The respondent was discharged from the S.S.G. Hospital on March 22, 1987. The respondent had also taken treatment in the Civil Hospital, Ahmedabad. It is the case of the respondent that he had incurred a huge expenditure towards the treatment. Therefore, he filed the abovenumbered suit claiming compensation for Rs.2,75,500/- from the appellant with interest and costs of the suit.

3. The appellant resisted the suit by filing written submission at Exh.15. It was admitted by the appellant that the respondent was travelling in 41-Dn Passenger Train on August 16, 1986. It was denied that the respondent had sustained injuries due to negligence on the part of the appellant or its employees. It was stated that the respondent had got down from the train at

Anand to purchase some eatable or for drinking water and, while he was returning, he had noticed that the train had started and,therefore, he had attempted to board the running train and, while doing so, he had fallen down and had sustained injuries. It was contended that the respondent himself was negligent as he had taken no precaution while boarding the running train. It was further contended that on the ill-fate day, before starting the train at Anand Station, the driver of the train had given all the necessary signals and whistles, and, therefore, the railway administration was not at all responsible for the alleged accident and, hence, the suit be dismissed with costs.

4. The trial court framed issues at Exh.12. The plaintiff to prove his case had examined himself at Exh.54 and had produced voluminous documentary evidence consisting of bills of medical expenses, disability certificate, the evidence with regard to his income, and the police case papers of the complaint lodged by him before the Anand Railway Police Station. No evidence was led by the appellant to controvert the evidence led by the respondent.

5. The trial court, on over all appreciation of oral as well as documentary evidence, held that the appellant was solely negligent in causing the accident. It was held that the income of the respondent was Rs.700 per month and the permanent disability sustained by him was 20% body as a whole. The trial court applied multiplier of 20 years and assessed the future loss of income accordingly. A decree for Rs.95,500/- was passed by the trial court with interest at the rate of 12% per annum from the date of the suit till realisation with proportionate costs of the suit, which has given rise to filing of this appeal by the appellant.

6. Learned advocate Mr. J.C.Sheth for the appellant has taken me through the entire record and proceedings of the Civil Suit No.5092 of 1988.

7. The learned advocate for the appellant has submitted that the trial court has applied a higher multiplier in assessing the compensation under the head of future loss of income. It is submitted that the compensation awarded by the trial court was on a higher side and is required to be modified suitably.

8. On the other hand, the learned advocate for the respondent has submitted that the decree was on the lower

side looking to the permanent disability suffered by the respondent. It is contended that the report of the Radiologist had shown that ascending urethrography was performed due to which a well defined false passage was seen in anterior urethra with contrast going to an external eutaneous opening. It is contended that, due to damage caused to urethra, the respondent was having permanent difficulty in passing the urine and had to visit Urologist for dilatation of urinary passage. The learned advocate for the respondent has submitted that, even though no cross appeal was filed for enhancement of compensation, the compensation awarded by the trial court is just and adequate looking to the injuries sustained and the permanent disablement suffered by the respondent and, therefore, the appeal be dismissed.

9. The factum of accident is not seriously disputed by the appellant. However, it is contended that the respondent had sustained the injuries due to his own negligence. No evidence - oral or documentary - was led by the appellant to discharge the burden that the negligence on the part of the respondent had also contributed to the occurrence of the accident. Therefore, the finding of the trial court that the accident had taken place due to sole negligence on the part of the railway administration deserves to be confirmed.

10. The assessment of monthly income of the respondent at Rs.700 per month was just and reasonable. The respondent had led oral as well as documentary with regard to his monthly income and the trial court had on the basis of the evidence led by the respondent had assessed the monthly income of the respondent at Rs.700/- per month, which deserves to be confirmed.

11. Due to the injuries sustained by the respondent in the accident, he had to remain in the hospital for nearly 15 months. The amount of Rs.10,500/- awarded by the trial court under the head of actual loss of income is, therefore, eminently just and proper and deserves to be confirmed. The amount of Rs.10,000/- awarded to the respondent for medical expenses was on the basis of the bills produced by the respondent at the trial court and, even though Rs.45,000 was claimed, the trial court had only awarded Rs.10,000 as medical expenses, which amount is quite proper and reasonable. Therefore, no interference is called for. Looking to the long treatment taken by the respondent and the pain and suffering caused to him during the span of long treatment, the amount of Rs.20,000 under the head of

shock, pain and suffering awarded to the petition does not call for any interference and the same is confirmed. The trial court had awarded Rs.5000 under the head of special diet to the respondent. Taking into consideration the long duration of treatment, and the number of operations performed and the serious injuries sustained by him and the loss of blood due to nine operations, the respondent must have taken special diet to come out of the weakness. Therefore, the amount of Rs.5,000 awarded by the trial court under the head of special diet, attendant charges, etc. does not call for any interference.

12. The learned advocate for the appellant has vehemently submitted that the amount of Rs.50,000/awarded under the head of future loss of income is on the higher side and, therefore, it requires to be modified suitably. In my opinion, looking to the permanent disablement suffered by the respondent, more particularly, the rupture of urethra, the amount of Rs.50,000/- awarded under the head of future loss of income does not call for any interference. The respondent may have to incur future medical expenses in taking further treatment at regular interval and he will have to consult an Urinologist for dilatation of urinary passage. Taking into consideration the overall view of the above facts and circumstances, more particularly the permanent disablement suffered by the respondent, the amount of Rs.50,000/- awarded towards the future loss of income is eminently just and proper and cannot be called on a higher side. Therefore, the amount awarded of Rs.50,000/- under the head of future loss of income is hereby confirmed.

13. As a result of foregoing discussion, this appeal fails and is hereby dismissed with no order as to costs. The judgment and decree dated September 28, 1994 passed by the learned Judge, Court No.17, City Civil Court, Ahmedabad, in Civil Suit No.5092 of 1988, partly decreeing the suit filed by the respondent and awarding a sum of Rs.95,500/- with interest at the rate of 12% per annum from the date of the suit till realisation with proportionate costs of the suit, is confirmed.

(M.H. Kadri, J.)

(swamy)